

**Michigan Supreme Court**  
State Court Administrative Office  
309 N. Washington Square, P. O. Box 30048  
Lansing, Michigan 48909  
(517) 373-4835  
John D. Ferry, Jr., State Court Administrator

**M E M O R A N D U M**

**DATE:** December 11, 2001

**TO:** All Circuit, District, and Municipal Judges  
**cc:** Court Administrators, County Clerks, and Juvenile Registers

**FROM:** John D. Ferry, Jr.

**SUBJ:** SCAO Administrative Memorandum 2001-10 (Corrected)  
Public Acts 84-91 - DNA Sampling and Assessment

---

Public Acts 84-91 of 2001 expand the requirement for courts to order DNA sampling. The acts take effect January 1, 2002, and will apply to persons convicted or found responsible on or after that date. Courts should contact their case management software vendor regarding programming to implement requirements of the acts.

The following provisions of PA 84-91 pertain to courts:

**A. Order to Take DNA Sample**

DNA sampling must be ordered on convictions or findings of responsibility for all felonies and certain specified misdemeanors. [MCL 28.176(4)]

**1. Felony Defined**

Felony is defined as a violation of a penal law of this state for which the offender may be punished by imprisonment for more than 1 year, or an offense expressly designated by law to be a felony. [MCL 712A.18k(11)(b), 803.25a(7)(a), 750.520m(11)(c), 28.172(d), 803.307a(7)(a)]

**2. Applicable Misdemeanor Offenses**

A list of applicable offenses is included. [MCL 712A.18k, 750.520m, 803.225a]

**3. Order for DNA Profiling**

SCAO form MC 234, Order for Counseling and Testing for Disease/Infection and Order for DNA Profiling, has been revised, will be mailed to all forms contact persons before the end of the year, and will be available at <http://www.courts.michigan.gov/courtforms/index.htm> on January 1, 2002. Item 7 has been modified for the court to name the law enforcement

agency ordered to take the DNA sample and includes a directive for the agency to notify the court if a sample has already been taken.

**B. Agency to Take DNA Sample**

The court shall order the county sheriff or the investigating law enforcement agency to take the sample. Samples required to be collected under MCL 712A.18k shall be collected by the investigating law enforcement agency. The sample must be collected after conviction or a finding of responsibility, but before sentencing or disposition. [MCL 28.176(4), 712A.18k(3)]

**1. Investigating Law Enforcement Agency Defined**

Investigating law enforcement agency means the law enforcement agency responsible for the investigation of the offense for which the person is convicted, including the county sheriff, but **not** including a probation officer employed by the Department of Corrections (DOC). [MCL 28.172(e), 750.520m(11)(b), 712A.18k(11)(c)]

**2. Sample Already Taken**

If the investigating law enforcement agency or the State Police already has a sample that meets the requirements of the DNA identification profiling system act at the time the person is convicted of or found responsible for an applicable violation, the person is not required to provide another sample. The criminal history record (CCH) available from the Michigan State Police Criminal Justice Information Center will indicate whether a DNA sample is already on file. A sample CCH record is provided. [MCL 28.173a(2), 28.176(3), 712.18k(2), 750.520m(2), 791.232d, 803.225a(2), 803.307a(2)]

**C. Assessment for Taking of DNA Sample**

**1. Ordering DNA Assessment**

The court must order each person found responsible or convicted to pay a \$60 assessment in addition to any fine, costs, or other assessments imposed, including the \$150 forensic laboratory fee. [MCL 28.176(3), 712.18k(2), 750.520m(2), 791.232d, 803.225a(2), 803.307a(2)]

The assessment shall be ordered upon the record and shall be listed separately in the adjudication order, judgment of sentence, or order of probation. [MCL 28.176(6), 712A.18k(5), 750.520m(7)]

The court may suspend payment of all or part of the assessment under review of a verified petition if it determines the person is unable to pay the assessment. [MCL 28.176(7), 712A.18k(6), 750.520m(8)]

**2. Sample Already Taken**

If a sample already exists which meets the requirements of the DNA identification profiling system act, the person is not required to pay the assessment. [MCL 28.173a(2), 28.176(3), 712.18k(2), 750.520m(2), 791.232d, 803.225a(2), 803.307a(2)]

**D. Distribution of DNA Assessment**

Distribution of all or any portion of the assessment ordered and collected by the court is as follows:

- 10% to the court's funding unit,
- 25% to the agency which collected the DNA sample, and
- 65% to the State Police.

[MCL 28.176(8), 712A.18k(7), 750.520m(9)]

**E. Persons Already in Custody**

**1. Juveniles**

A person who is a public ward under a youth agency's jurisdiction who has been found responsible for any of the identified offenses may not be placed in a community placement of any kind or discharged from wardship until a DNA sample is provided. [MCL 803.307a(1)]

A juvenile under the supervision of the FIA or a county juvenile agency shall not be placed in a community placement of any kind and shall not be discharged from wardship until a DNA sample is provided if the juvenile has been found responsible for a violation of a specified offense. [MCL 803.225a(1)]

**2. DOC Prisoners**

A prisoner shall not be released on parole, placed in a community placement facility, including a community corrections center or a community residential home, or discharged upon completion of his or her maximum sentence until a DNA sample is provided. [MCL 791.233d(1)]

**3. Hearing/Order To Take Sample Not Required**

The FIA, county juvenile agency, youth agency, or the DOC is neither required to give the juvenile, public ward, or prisoner an opportunity for a hearing nor required to obtain a court order before collecting the sample. [MCL 791.233d(3), 803.225a(4), 803.307a(4)]

**F. Transmittal of Assessment to State**

The Department of Treasury court transmittal advice forms, form 57 for circuit and probate courts and form 295 for district and municipal courts, will be modified to transmit revenue due to the State Police.

**G. Resist or Refuse to Provide Sample**

A person who refuses to provide or resists providing a sample is guilty of a misdemeanor punishable by not more than 1 year imprisonment or a fine of not more than \$1,000, or both. [*MCL 28.173a(1)*]

For further information regarding assessment distribution, contact Rebecca Mack at 517-373-5595. For information regarding applicable offenses or other implementation issues, contact Sandi Hartnell at 517-373-0122.

**Eligible Offenses for DNA Profiling Assessment**  
**Public Acts 84 - 91 of 2001**  
**Effective January 1, 2002**

Juvenile found responsible for:	750.83 Assault with intent to commit murder 750.91 Attempt to murder 750.316 First degree murder 750.317 Second degree murder 750.321 Manslaughter 750.349 (or attempt) Kidnapping 750.520b (or attempt) CSC 1 <sup>st</sup> 750.520c (or attempt) CSC 2 <sup>nd</sup> 750.520d (or attempt) CSC 3 <sup>rd</sup> 750.520e (or attempt) CSC 4 <sup>th</sup> 750.520g (or attempt) Assault with intent to commit CSC 750.167(1)(c) (or corresponding ordinance) Window peeping 750.167(1)(f) (or corresponding ordinance) Indecent or obscene public behavior 750.335a (or corresponding ordinance) Indecent exposure
--	---

Anyone convicted of:	Any felony (or attempt) 750.145a (or corresponding ordinance) Enticing a child for immoral purposes 750.167(1)(c) (or corresponding ordinance) Window peeping 750.167(1)(f) (or corresponding ordinance) Indecent or obscene public behavior 750.167(1)(i) (or corresponding ordinance) Loitering in a house of prostitution 750.335a (or corresponding ordinance) Indecent exposure 750.451 (or corresponding ordinance) First and second prostitution violations 750.454 (or corresponding ordinance) Leasing a house for purposes of prostitution 750.462 (or corresponding ordinance) Female under 17 in a house of prostitution
-------------------------	--

# Sample Criminal History Record Containing DNA Record Information

A TEST 68 7 11/06/01 1022 CRD21.

MI3300671

PUR: C RESPONSE TO INQUIRY ON SID: 497J

OPR: WORDEN

FOR: TEST /DNA

OCA: FLAG

\*\*\*\*\*

THIS IS A TEST RECORD ON THE CRIMINAL HISTORY RECORD SYSTEM

\*\*\*\*\*

NAM: DOE/HERMAN/DAVID/

SID: 497J

RAC: W SEX: M DOB: 07-04-1930 FBI:

HGT: 509 WGT: 150 HAI: BRO III: UNKNOWN

EYE: BLU POB: MI

DLN: MI/D666666888999

NCIC FINGERPRINT CLASSIFICATION

MNU:

FPC:

PRN: 998877

SOC: 666-44-3333

AFIS PRINTS AVAILABLE: YES

PALM PRINTS AVAILABLE: NO

**DNA RECORD AVAILABLE: YES (PHONE 517-322-6600)**

SCAR/MARK/TATTOO: SC LF ARM TAT R ARM SC L ANKL  
SC FACE CRIP R FT

ADDITIONAL IDENTIFIERS AND COMMENTS:

FIREARMS RIGHTS RESTORATION: APPROVED ORI: MI3301100 DATE: 05-06-1993

NAM: DOE/JOHN//

---